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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,349	10/30/2003	Todd Michael Wenger	H1799-00225	7517
41396	7590	11/07/2005	EXAMINER	
DUANE MORRIS LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			LEO, LEONARD R	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/697,349

Applicant(s)

WENGER ET AL.

Examiner

Leonard R. Leo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-8 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-8 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed on September 1, 2005 has been entered. Claims 1-3, 9, 17 are cancelled, and claims 4-8 and 19-21 are pending.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4-8 and 19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-6 of U.S. Patent No. 6,802,362 in view of Przyborowski.

The patent claims all the limitations of the application claims except collar portions that engage and grip the pipe.

Przyborowski discloses a heat exchanger comprising a pipe 22 and a fin 10 having a hole 18 with collar portions 19 that engage and grip the pipe (page 1, lines 24-40) for the purpose of securing the fin to the pipe.

Since the patent and Przyborowski are both from the same field of endeavor and/or analogous art, the purpose disclosed by Przyborowski would have been recognized in the pertinent art of the patent.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the patent collar portions that engage and grip the pipe for the purpose of securing the fin to the pipe as recognized by Przyborowski.

Regarding claim 20, Przyborowski discloses one bent edge having saddle portions 28.

Regarding claim 21, Przyborowski discloses embossments 33.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-8 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawara in view of Przyborowski.

Ogawara discloses all the claimed limitations except a collar portion that engage and grip the heat pipe.

Przyborowski discloses a heat exchanger comprising a pipe 22 and a plurality of fins 10, each having a hole 18 with collar portions 19 that engage and grip the pipe (page 1, lines 24-40) for the purpose of securing the fin to the pipe.

Since Ogawara and Przyborowski are both from the same field of endeavor and/or analogous art, the purpose disclosed by Przyborowski would have been recognized in the pertinent art of Ogawara.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Ogawara collar portions that engage and grip the pipe for the purpose of securing the fin to the pipe as recognized by Przyborowski.

Regarding claim 5, Przyborowski discloses slots 21.

Regarding claims 6-7, the recitation of “formed by stamping” and formed by drawing” is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113. However, Przyborowski (page 2, lines 7-10) discloses the collars are drawn.

Regarding claim 20, Przyborowski discloses one bent edge having saddle portions 28.

Regarding claim 21, Przyborowski discloses embossments 33.

Response to Arguments

The objection to claims 20-21 is withdrawn in view of the amendment.

The double patenting rejection of claims 1-3 and 17 in view of U.S. Patent No. 6,802,362 and Hersey is withdrawn.

The anticipatory rejections in view of Young, Ritter, Przyborowski, Briscoe et al and Shen are withdrawn in view of the cancellation of the claims.

The obviousness rejection in view of Briscoe et al is withdrawn in view of the amendment.

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

The secondary reference of Przyborowski teaches one of ordinary skill in the art to employ a fin having a collar that engage and grip the pipe for the purpose of securing the fin to the pipe.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leonard R. Leo
Primary Examiner
Art Unit 3753

November 3, 2005